

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STATE OF WASHINGTON,

Plaintiff,

v.

LANDMARK TECHNOLOGY A, LLC,
and RAYMOND MERCADO,
individually,

Defendants.

NO. 2:21-cv-00728-RSM

DECLARATION OF BOB HYDE IN
SUPPORT OF STATE'S REPLY ON
ITS MOTION TO COMPEL AND FOR
RELIEF FROM DEADLINES TO
ADDRESS POTENTIAL DISCOVERY
MISCONDUCT

NOTE ON MOTION CALENDAR:
Wednesday, July 24, 2024

I, Bob Hyde, declare as follows:

1. I am an Assistant Attorney General in the Consumer Protection Division of the Washington State Attorney General's Office. I am one of the attorneys of record for the Plaintiff State of Washington in the above-captioned matter. I am licensed to practice law in the State of Washington and am an active member in good standing of the WSBA.

2. I make this declaration with personal knowledge.

3. Once our office received Defendants' July 11, 2024, supplemental production (the "Post-Motion Production"), our professional staff loaded that production into Everlaw. Everlaw is a cloud-based eDiscovery platform. Our office utilizes Everlaw for document review during active litigation.

4. Based upon my review of the Post-Motion Production in Everlaw, that production contains 4,760 total documents totaling 13,363 pages. The production includes 2,426 emails in native format (i.e., .eml files), 1,459 spreadsheets, 611 .pdfs, 240 Word documents, and 24 other documents.

5. Based upon my review of the Post-Motion Production, Defendants utilized 14 separate email addresses in conducting business, including 3 with the word “Landmark” somewhere in the address: Patrick@landmarkedi.com; Melodycamp123@gmail.com; raymercadolandmark@gmail.com; lb_lockwood@yahoo.com; pat@nunally.com; patrick@nunally.com; jlee@banishlaw.com; genevieve3290@yahoo.com; mercado.raymond@gmail.com; melodycamp123@yahoo.com; jlee.banishlaw@gmail.com; leeja8@gmail.com; gregbosch@zoho.com; gregbosch@me.com.

6. Based upon my review of the Post-Motion Production, Melody Camp is the sender or a recipient of 1,095 of the 2,426 emails produced in native format.

7. As noted above, Defendants produced a significant number of emails in native format in their July 11 production. However, the Post-Motion Production also contains large .pdf files without explanation as to the source of the .pdfs, the custodian(s), and without any meaningful metadata.

8. For example, document LTA_036481 is an 893-page .pdf file that contains hundreds of emails spanning several years. Although the emails are to and from a variety of individuals, the metadata for the file reveals only a custodian of “Landmark Technology A.” Again, although the emails span a period covering at least July 2018 through at least January 2021, the metadata reveals the file was created on July 10, 2024, the day before the Post-Motion Production. Additionally, the native file is entitled “merged.pdf,” and all attachments have been removed from the emails.

9. Defendants have not explained the source of the emails in LTA_036481, why they were produced in one large .pdf without attachments, why the document was created the

1 day before being produced to the State, etc. Nevertheless, within this 893-page .pdf are dozens
 2 of responsive documents supporting the State's claims here, including an email where Defendant
 3 Mercado refers to his own company as a "patent troll." A true and correct copy of portions of
 4 LTA_036481 is attached hereto as **Exhibit T**.

5 10. In their opposition papers, Defendants claim that their Post-Motion Production
 6 contained only 10 Washington-related emails. Dkt. 92, at 11. However, Defendants and their
 7 counsel never specify how they identified these particular 10 emails from the rest of the
 8 production, such as what search terms were used to confirm there are only 10 such emails among
 9 the 4,700+ total documents, which of the 14 email addresses is the proper custodian for these 10
 10 emails, etc.

11 11. The State's review of the Post-Motion Production has only just begun. However,
 12 the searches I have run thus far indicate that there are far more than ten Washington-related
 13 documents within the Post-Motion Production. For example, a search of "WA" within the Post-
 14 Motion Production reveals hits on 434 separate documents, a search of "Washington" reveals
 15 hits on 386 documents, and a search of "Seattle" reveals hits on 170 separate documents. A
 16 search of "Ben" and "Hodges" reveals hits on 80 separate documents, while the term
 17 "SaltWorks" (an LTA target based in Washington who settled in 2021) reveals hits on 38
 18 separate documents. A search of the terms "Tom" and "Bihn" (an LTA target based in
 19 Washington who settled in 2020) reveals hits on 26 separate documents, while a search of
 20 "Stoneway" and "Electric" (another Washington-based LTA target who settled in 2020) reveals
 21 hits on 24 separate documents.

22 12. On June 25, 2024, within Defendants' Supplemental Initial Disclosure
 23 production, Defendants produced a series of emails with the top-most email header information
 24 redacted. Defendants have not yet produced the unredacted header information or the related
 25 metadata. For example, LTA018215-17 is an email chain dated July 11, 2018, entitled "Draft
 26 PTO Complaint" between and among Patrick Nunally, Raymond Mercado, and Lawrence

1 Lockwood. In their July 11 supplemental production, Defendants produced the underlying 2018
2 email in native format as bates number LTA_037885. However, the file is incomplete because
3 the previously redacted header information was not included in the native file for LTA_037885
4 or the other redacted emails originally produced on June 25.

5 I declare, under penalty of perjury under the laws of the State of Washington, that the
6 foregoing is true and correct.

7 DATED this 24th day of July, 2024, at Seattle, Washington.

8
9 /s/ Bob Hyde

10 BOB HYDE, WSBA No. 33593
11 Assistant Attorney General
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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing to be served on all counsel of record via the ECF system.

I certify, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED this 24th day of July, 2024, at Seattle, Washington.

/s/ Bob Hyde

BOB HYDE, WSBA No. 33593
Assistant Attorney General